



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division**

Filing Procedures Bulletin

Issued: August 5, 2005

The following filing procedures shall apply to the conduct of proceedings before the Cable Television Division ("Cable Division"). These filing procedures comply with 801 C.M.R. 1, Standard Rules of Adjudicatory Practice and Procedures and the Cable Division may modify these procedures as appropriate, to the extent permitted by law. Exceptions to any filing procedure may be made by the Director of the Cable Division for good cause shown.

Number of Copies

All submissions to the Cable Division must include one original and two copies.

Parties may request exemption from this rule where submission of the two additional copies would pose a burden.

Address of Filings

The original and required copies of all filings must be submitted to Andrea Nixon, Clerk of the Cable Division, One South Station, Boston Massachusetts 02110.

In addition, we request, to the extent possible, that electronic copies of filings be submitted either by e-mail attachment to cable.inquiry@state.ma.us or on a 3.5" IBM-compatible disk. The text of the e-mail or the disk label must specify: (1) the docket number of the proceeding, (2) the name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect, Microsoft Word, or as an Adobe PDF file. Data or spreadsheet responses should be compatible with Microsoft Excel.

The filings submitted in electronic format will be posted as an "Open Proceeding" under the appropriate docket number on the Cable Division's website at:

<http://www.mass.gov/dte/catv/>.

Timely Filing and Exchange of Materials

Documents are considered to be timely filed with the Cable Division if the original document is received prior to 5:00 p.m. on the due date. Facsimile copies sent to the Cable Division are considered courtesy copies and are not considered originals for purposes of meeting any Cable Division deadline. Electronic copies may be considered originals if prior permission to treat them as such is received from the Director of the Cable Division.

All parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile, or other accelerated means of delivery. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of facsimile, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

Where information requests are sent to a party by means of facsimile, the facsimile must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

Filing of Motions and Answers

Parties shall file claims and motions and answers to claims and motions as provided under 801 C.M.R §§ 1.01(6)(d) and 1.01(7). No further filings are permitted without prior leave of the Director of the Cable Division. Any application to make further filings shall be in writing and shall set forth with specificity the grounds thereto.

Format of Document Filings

All discovery and record request documents filed with the Cable Division and all documents offered as exhibits shall be accompanied by a cover letter describing the filing.

Responses to information and record requests shall be answered in writing on a separate page containing the following information: (1) set and question number; (2) recitation of request; and (3) identity of person who will support the response.

Responses should be supplied when complete. Parties should not wait for all answers to be complete before submitting.

Discovery

The discovery period will be established at a procedural conference. Parties may begin discovery at their convenience.

Responses to document requests will not be part of the record unless marked and admitted into evidence.

Parties shall make a good faith effort to provide responses to document requests and interrogatories within 10 calendar days of receipt of the request, unless otherwise indicated. Where the computed response date is a Saturday, Sunday, legal holiday, or any other day on which the Cable Division is closed, the response shall be due on the next following business day. This time for responses to information requests and interrogatories shall not apply where the established procedural schedule sets a different time.

The parties must first attempt resolution of any discovery dispute before coming to the Cable Division for assistance.

For purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

Protected Material

Pursuant to G.L. c. 25 § 5D, the Cable Division may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of a proceeding. There is a presumption that the information for which protection is sought is public information. Id. Thus, the proponent of such protection has the burden to establish the need for such protection. Id. If the Cable Division determines that the proponent has established a need for protection, the Cable Division may protect from public disclosure only so much of the information as is necessary to meet the need. Id.

A proponent requesting confidentiality must submit to the Director of the Cable Division under separate cover two copies of any document for which it claims protection and which the proponent plans to submit of its own accord or is required to submit pursuant to an information request of the Cable Division or any other party. The documents submitted should be marked appropriately (e.g. "Competitively Sensitive Material" or "Proprietary"). Simultaneously, the proponent should file a motion with the Clerk of the Cable Division that requests confidential treatment of the

filing made with the Director of the Cable Division. The motion must fully explain the the proponent's claim for protection, the harm that would occur if the document were made public, and the length of time during which protection would be required. The motion should reference the information request, if any, to which the confidential filing is a response. If the request is made at the time responses to the information request are due, the responses should be filed with the Clerk of the Cable Division, including a redacted version of the document for which protection is sought.

Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth business day following the day on which the request is made.

Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next business day.

Offering of Exhibits

The proponent of an exhibit must offer the Cable Division three bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. Where material exceeding 25 pages is offered for marking and such material is already in the possession of all parties (e.g., information request responses), the proponent may, no later than 9:00 a.m. on the day the material is to be offered for marking, inform all parties and the Cable Division of the intended use of such material. Nonetheless, the proponent of any such document must provide the Director of the Cable Division with a copy for marking.

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify the method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

Late Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late filed exhibits must be accompanied by a motion to reopen the record and be supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.